

**ORDINANCE NO. 2020-05**  
**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS AMENDING**  
**CHAPTER 11.27 OF THE ENCINITAS MUNICIPAL CODE PROHIBITING THE USE,**  
**DISTRIBUTION, AND SALE OF EXPANDED POLYSTYRENE FOOD SERVICE WARE,**  
**PLASTIC UTENSILS, AND BEVERAGE STRAWS**

WHEREAS, the City of Encinitas has engaged in ongoing efforts to reduce or limit products that are harmful to the environment;

WHEREAS, the City of Encinitas has a long history of environmental stewardship and planning for a sustainable future;

WHEREAS, this ordinance aims to support the City of Encinitas' Climate Action Plan since single-use plastics contribute to greenhouse gas (GHG) emissions via materials extractions, product production and waste disposal, and without action, global production is projected to triple and GHG emissions from plastics would reach fifteen percent (15%) of the global carbon budget by 2050;

WHEREAS, the purpose of this ordinance is to encourage the use of ocean-friendly products that do not have a detrimental effect on the natural environment or character of the community;

WHEREAS, plastics break down into ever smaller pieces through photo-, physical, and biological degradation processes, and these smaller pieces persist in the environment for hundreds of years and can enter into the food chain when animals ingest these pieces believing they are food, and harmful chemicals associated with plastics can also leach into soils and water;

WHEREAS, approximately eighty percent (80%) of all refuse that ends up in the oceans comes from the land;

WHEREAS, refuse found and collected along San Diego County coasts is primarily composed of plastics. The San Diego Coastkeeper reports that in 2018, fifty-three percent (53%) of debris collected was plastic. Many of the plastics collected were pieces less than one inch in diameter, and much of it was polystyrene foam;

WHEREAS, there are few facilities in the State of California that recycle polystyrene or are able to do so only if there is a demand and the product is wiped clean of all food debris;

WHEREAS, many local environmental groups are encouraging local government to limit or ban the use of polystyrene and single-use plastics in their jurisdictions;

WHEREAS, the California Coastal Commission has developed "A Plan of Action from The Plastic Debris Project" in 2006, which was funded by the State Water Resources Control Board, and that Plan recommends that local government impose limits, bans, and prohibitions on materials that more commonly become litter and marine debris;

WHEREAS, both houses of the California State Legislature have acknowledged the worldwide environmental devastation and health problems wrought by plastic and non-recycled trash and are considering Senate Bill 54 and Assembly Bill 1080, together known as the California Circular Economy and Plastic Pollution Reduction Act in an attempt to dramatically reduce plastic and packaging waste and jump start the in-state clean recycling economy;

WHEREAS, the California Circular Economy and Plastic Pollution Reduction Act sets a goal of an overall reduction of single-use plastic containers by seventy-five percent (75%) by the year 2030;

WHEREAS, the City Council finds that because the City of Encinitas is a coastal community, the City has the opportunity to reduce the amount of plastics that end up in the ocean and has its police powers to assist with that goal;

WHEREAS, the regulation of single-use disposable items within the City is an action that reduces the amount of anthropogenic debris that ends up on the beach;

WHEREAS, the City of Encinitas previously took action to prohibit single-use carry-out bags and food providers from dispensing prepared food to customers in disposable food service ware made from expanded polystyrene; and

WHEREAS, this Ordinance amends Chapter 11.27 of the Encinitas Municipal Code to provide for expanded prohibitions on the use and distribution of single-use materials that pollute the environment and ocean.

NOW, THEREFORE, the City Council of the City of Encinitas, California, does ordain as follows:

SECTION 1. All of the above statements are true; and

SECTION 2. Chapter 11.27 of Title 11 of the Encinitas Municipal Code is hereby amended to read as follows (the strikethrough text represents deleted language and the underlined text represents new language):

**CHAPTER 11.27****PROHIBITION ON THE USE, DISTRIBUTION, AND SALE OF  
EXPANDED POLYSTYRENE FOOD SERVICE WARE, PLASTIC UTENSILS, AND  
BEVERAGE STRAWS MADE OF PLASTIC**

11.27.010 Title. This Chapter shall be known as the “City of Encinitas Expanded Polystyrene Disposable Food Service Ware, Plastic Utensil, and Beverage Straw Ordinance”.

11.27.020 Purpose and Intent. The purpose of this Chapter is to establish standards and procedures for environmental waste and litter reduction measures, and promote environmentally sustainable practices throughout the City by prohibiting the use and distribution of Expanded Polystyrene Disposable Food Service Ware, Plastic Utensils, and Beverage Straws by Food Providers within the City of Encinitas.

11.27.030 Definitions. For purposes of this Chapter only, the terms below have the following meaning:

“Beverage Straw” means any straw or tube used for transferring a beverage from its container to the mouth of the drinker.

“City” means the City of Encinitas.

“City Facility” means any building, structure, property, park, open space, or vehicle, owned, leased or operated by the City, its agents, agencies, departments or franchisees.

“City Contractor” means any person that enters into an agreement with the City to furnish products or services to or for the City.

“City-Sponsored Event” means any event, activity or meeting organized or sponsored, in whole or in part, by the City or any department of the City.

“Customer” means any person obtaining Prepared Food from a Restaurant or Food Provider.

“Disposable Food Service Ware” or “Disposables” means single-use, disposable products used for serving or transporting Prepared Food, including but not limited to plates, bowls, trays, wrappers or wrapping, platters, cartons, condiment containers, cups or drink ware, or any other container in or on which Prepared Foods are placed or packaged for consumption. This definition excludes single use disposable straws, cup lids, and utensils.

“Distribute” means to provide or offer to provide an item, either as a separate transaction or as part of a transaction for another item, regardless of whether compensation is received.

“Egg Carton” means a container commonly used to package eggs sold to a Customer.

“Event” means an organized recreational activity that includes 25 or more participants.

“Expanded Polystyrene” or “EPS” means polystyrene that has been expanded or “blown”

using a gaseous blowing agent into a solid foam. EPS is sometimes called “Styrofoam”, a Dow Chemical Co. trademark form of polystyrene foam insulation.

“Food Provider” means any Person or establishment that provides or sells Prepared Food within the City to the general public to be consumed on the premises or for take-away consumption. Food Provider includes but is not limited to (1) a grocery store, supermarket, delicatessen, restaurant, drive-thru, café, cafeteria, coffee shop, snack shop, public food market, farmers’ market, convenience store, or similar fixed place where Prepared Food is available for sale on the premises or for take-away consumption; and (2) any mobile store, food vendor, caterer, food truck, vending machine or similar mobile outlet. Food Provider also includes any organization, group or individual that regularly provides Prepared Food to its members or the general public as a part of its activities or services.

“Food Tray” means a tray commonly used for packaging food for retail sale to a Customer.

“Person” means any person, business, corporation, or event organizer or promoter; public, nonprofit or private entity, agency or institution; or partnership, association or other organization or group, however organized.

“Plastic Utensil” means fork, spoon, knife or stirrer, or other eating implement made predominately of plastic derived from either petroleum or a biologically based polymer.

“Polystyrene” means a thermoplastic petrochemical material utilizing the styrene monomer, including but not limited to polystyrene foam or expanded polystyrene, processed by any number of techniques, including but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, or extrusion-blow molding (extruded foam polystyrene), and clear or solid polystyrene (oriented polystyrene). The Recycle Code for polystyrene is ‘6’ or ‘PS,’ either alone or in combination with other letters. This definition applies to all Polystyrene Food Service Ware, regardless of whether it exhibits a Recycle Code.

“Prepared Food” means any food or beverage that is (1) ready to consume without any further food preparation, alteration or repackaging; and (2) prepared, provided, sold or served by a Food Provider using any cooking, packaging or food preparation technique. Prepared Food may be eaten either on or off the Food Provider’s premises. For purposes of this ordinance, Prepared Food does not include (1) any raw uncooked meat, poultry, fish or eggs, unless provided for consumption without further food preparation, and (2) fresh produce provided for consumption without food preparation or repackaging, including fruits, vegetables, and herbs, sold by grocery stores, supermarkets, food markets, farmers’ markets and other food vendors.

“Restaurant” means any person or establishment doing business within the City of Encinitas that provides prepared food or beverages for consumption on or off its premises such as a restaurant, café, bakery, grocery or convenience store counter or delicatessen, or catering truck vehicle. “Restaurant” for the purposes of this Chapter, includes mobile food preparation units.

11.27.040 Prohibition of Expanded Polystyrene Food Service Wares.

A. Food Providers are prohibited from providing Prepared Food in Disposable Food Service Ware made of EPS.

B. City Facilities, City-managed concessions, City-sponsored or co-sponsored events, City permitted events and all franchisees, contractors, and vendors doing business with the City are prohibited from using Disposable Food Service Ware made of EPS within the City.

11.27.050 Distribution of Plastic Utensils.

A. A Food Provider may only Distribute Plastic Utensils upon request by the Customer or upon offer to the Customer by the Food Provider. This provision shall apply to takeout and drive-thru orders.

B. A Food Provider may have Plastic Utensils available for customers at locations within the Restaurant.

C. City Facilities, City-managed concessions, City-sponsored or co-sponsored events, and all franchisees, contractors, and vendors doing business with the City are prohibited from Distributing Plastic Utensils.

D. Effective August 1, 2020, City permitted special events on City property are prohibited from Distributing Plastic Utensils.

11.27.060 Distribution of Beverage Straws.

A. A Food Provider may only Distribute Beverage Straws upon request by the Customer or upon offer to the Customer by the Food Provider. This provision shall apply to takeout and drive-thru orders.

B. Effective August 1, 2020, Food Providers are prohibited from the Distribution of Beverage Straws made of plastic.

C. City Facilities, City-managed concessions, City-sponsored or co-sponsored events, and all franchisees, contractors, and vendors doing business with the City are prohibited from the Distribution of Beverage Straws made of plastic.

D. Effective August 1, 2020, City permitted special events on City property are prohibited from the Distribution of Beverage Straws made of plastic.

11.26.070 Prohibition on the sale of Disposable Food Service Ware, Plastic Utensils, and Beverage Straws made of plastic.

A. Effective October 1, 2020 no Person may Distribute, within the City:

1. Any Disposable Food Service Ware made, in whole or in part, from EPS.

2. Plastic Utensils.
3. Beverage Straws made of plastic.
4. Egg Cartons or Food Trays made, in whole or in part, from EPS.
5. Coolers, ice chests, or similar containers made in whole or in part, from Expanded Polystyrene that is not wholly encapsulated or encased within a non-Polystyrene material.

#### 11.27.075 No Conflict with Federal or State Law

Nothing in this chapter is intended to or shall be interpreted as conflicting with any federal or state regulation.

#### 11.27.080 Prohibition on Expanded Polystyrene Packaging Materials

A. No Person shall use Expanded Polystyrene loose fill packaging and cushioning material, such as foam peanuts, packing peanuts, foam popcorn or packing noodles, in the packaging of products, equipment, or other items.

#### 11.27.090 Exemptions.

Notwithstanding the requirements contained in Section 11.27.040, 11.27.050, 11.27.060 and 11.27.070,

A. The following are exempt from the provisions of this chapter:

1. Food and/or products prepared or packaged outside of the City, provided such food is not altered, packaged or repackaged within the City limits.
2. Food provided by School Districts under its official food service program.
3. Food, Plastic Utensils, or Beverage Straws brought by individuals for personal consumption or use to City Facilities, including but not limited to City parks and the beach, provided the City Facility is being used for individual recreation or similar purposes and such facility use is not part of an Event.
4. Notwithstanding any other provision of this Article, and in recognition that straws and other utensils may provide basic accommodation for persons with disabilities or medical conditions to eat or drink, Food or Beverage Establishments in the City of Encinitas must provide a Single-Use Plastic Straw upon request to any consumer who requires the use of same due to a disability or medical condition. Nothing in this Chapter shall conflict, or be construed to conflict, with the Americans with Disabilities Act, the Unruh Act, the Disabled Persons Act, or other applicable laws concerning the rights of individuals with disabilities. In particular, nothing in this Chapter shall restrict, or be construed to restrict, the availability of single use plastic

straws to individuals who may require and request the use of single-use plastic straws.

5. Public Health and Safety. The City Manager may exempt a food provider or beverage provider when there is a public health and safety requirement or medical necessity to use the product.
6. During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and food providers shall be exempt from the provisions of this Chapter.

B. The City Manager or his/her designee may exempt any Food Provider or Person from the requirements of this Chapter for a one-year period, upon written request by applicant that the conditions of the Chapter would cause an Undue Hardship following the operative date of this ordinance, as follows:

1. A request for an exemption shall be filed in writing with the City Manager or his/her designee and shall include documentation of the reason for the claimed exemption and any other information necessary for the City to make its decision. An exemption application shall include all information necessary for the City to make its decision, including, but not limited to documentation showing the factual support for the claimed exemption. The City may require the applicant to provide additional information as necessary to make the required determinations.
2. The City Manager or his/her designee may approve the exemption for a maximum of one (1) year, with or without conditions, upon finding that compliance would create an undue hardship. Undue hardship shall be construed to include but not be limited to situations where:
  - a. There are no reasonable alternatives to Expanded Polystyrene Food Service Ware for reasons that are unique to the applicant; or
  - b. Compliance with the requirements of this chapter would deprive a person of a legally protected right. The exemption may be extended for additional terms of up to one year each, upon a showing of the continuation of the legal right.
3. The City Council may by resolution establish a fee for exemption applications. The application fee shall be an amount sufficient to cover the costs of processing the exemption application.

#### 11.27.100 Enforcement.

A. Any violation of this Chapter shall be enforced through the Administrative Citation Program set forth in Chapter 1.08 of the Encinitas Municipal Code.

B. Each violation of this chapter shall be considered a separate offense.

C. The remedies and penalties provided in this chapter are cumulative and not

exclusive and nothing in this shall preclude the City from pursuing any other remedies. The City Attorney may seek legal, injunctive, or any other relief to enforce the provisions of this chapter and any regulations or administrative procedure developed pursuant hereto.

D. In addition to any other applicable civil or criminal penalty, any person convicted of a violation of this chapter is guilty of an infraction, which is punishable pursuant to the penalty provisions set forth in Chapter 1.08 of this Code.

#### 11.27.110 Administrative Remedies.

A. Any person violating, causing or maintaining a violation of any provision of this chapter may be issued an administrative citation assessing a civil fine as provided in this section. The procedures for the imposition, enforcement, collection, and administrative review of civil fines shall be in addition to, and not in lieu of, any criminal, civil or other legal remedy established by law and available to the City to address violations of this chapter.

B. Upon a first violation of any provision of this chapter, the City Manager or his/her designee shall issue a written warning Notice of Violation to the offending retail establishment. The warning Notice of Violation shall specify the violation(s), a date by which the violation(s) must be ceased and abated, and the penalties in the event of future violations. If, after the specified correction period following the written warning, the violation is not ceased or abated, the City Manager or his/her designee may issue an administrative citation assessing fines in accordance with this section.

C. Each separate violation following the issuance of a warning Notice of Violation shall be subject to the following administrative fines which shall be cumulative with each day that a violation occurs constituting a separate violation:

1. A fine not exceeding one hundred dollars (\$100) for the first violation following the issuance of a warning notice.
2. A fine not exceeding two hundred dollars (\$200) for the second violation following the issuance of a warning notice.
3. A fine not exceeding five hundred (\$500) for each additional violation that occurs following the issuance of a warning notice.

D. Each administrative citation issued for a violation of this chapter shall at a minimum contain the information specified in chapter 1.08.080 of the Encinitas Municipal Code, Administrative Citations, and any person receiving an administrative citation may contest the citation, and shall be entitled to an administrative hearing, pursuant to the procedures set forth in that chapter.

#### 11.27.120 No Conflict with Federal or State Law.

Nothing in this chapter is intended to or shall be interpreted as conflicting with any federal or state law or regulation.

#### 11.27.130 Operative Date.

A. This Ordinance shall become operative upon the effective date.



B. Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

11.27.140 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional to this end, the provisions of this Ordinance are declared severable.

SECTION 3. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken "to assure the maintenance, restoration, enhancement and protection of the environment" and pursuant to Section 15061 (b)(3) because there is no possibility that the activity in question may have a significant effect on the environment. Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that anyone or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 4. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Encinitas shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

**INTRODUCED** at a regular meeting of the City Council of the City of Encinitas, California held on the \_\_\_\_ day of \_\_\_\_ 2020, and thereafter,

**PASSED, APPROVED, AND ADOPTED** at a regular meeting of the City Council of the City of Encinitas, California, on the \_\_\_\_ day of \_\_\_\_ 2020, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
CATHERINE S. BLAKESPEAR, Mayor

Approved as to form:

Attest:

\_\_\_\_\_  
LESLIE E. DEVANEY, City Attorney

\_\_\_\_\_  
Kathy Hollywood, City Clerk